F. M. TULLY
TULLY CORP.

IBLA 92-528 Decided January 19, 1995

Appeal from a decision of the Colorado State Office, Bureau of Land Management, that oil and gas leases had not been extended by diligent drilling operations in progress at the expiration of the lease term, and had expired. COC22887, et al. 1/

Affirmed.

1. Oil and Gas Leases: Drilling--Oil and Gas Leases: Expiration--Oil and Gas Leases: Extensions--Oil and Gas Leases: Suspensions

When BLM grants a suspension of an oil and gas lease during its primary term, the suspension extends the primary term for a period equal to the period of suspension. The lessee will not be entitled to a 2-year extension for drilling over the original expiration date when no drilling operations were in progress on the expiration date of the extended primary lease term.

APPEARANCES: F. M. Tully, President, Tully Corporation, Denver, Colorado.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

F. M. Tully and Tully Corporation (collectively referred to as the Tullys) have appealed a May 28, 1992, Colorado State Office, Bureau of Land Management (BLM), decision that leases committed to the Willow Creek Unit

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1/ The lessees involved in this appeal are:

Leases	Lessee
COC22887	Tully Corporation
COC24805	F. M. Tully
COC25076	Tully Corporation
COC26056	Tully Corporation
COC38336	Tully Corporation
COC45157	Tully Corporation
COC45169	F. M. Tully

Agreement, No. COC 53314X, were not extended by diligent drilling operations in progress at the expiration of the primary lease term, and had expired. 2/ See 43 CFR 3107.1.

The leases in question were issued effective November 1, 1981, and had an original October 31, 1991, expiration date. 3/ On July 23, 1991, the Tullys requested 3-month lease extensions because of a force majeure suspension of operations. The Tullys had entered into an agreement with Pennzoil Exploration and Production Company (Pennzoil) for a seismic program, and drilling a deep subthrust well. According to the Tullys, the seismic work and deep-well drilling are interdependent. On July 12, 1990, Century Geophysical Corporation (Century), contractor for Pennzoil, had submitted a notice to BLM describing its planned seismic survey. In a letter dated September 4, 1990, BLM's White River Resource Area notified Century that, because of an upcoming hunting season, it was delaying the grant of permission for the survey until November 11, 1990. Referring to a September 5, 1990, letter from Pennzoil to BLM, the Tullys noted that Pennzoil expressed concern regarding further delays that might result from bad weather that could be expected after the hunting season ended.

On October 10, 1991, BLM approved Willow Creek Unit Agreement COC 53314X, and suspended the leases for the period from July 1 through October 31, 1991. In a subsequent letter (the file copy is undated), BLM noted that the suspension automatically expired, effective October 1, 1991, the first of the month in which operations (construction of location) commenced.

On January 27, 1992, the Tullys filed for a statutory 2-year lease extension. The Mineral Leasing Act, 30 U.S.C. § 226(e) (1988), as amended, provides that when actual drilling operations commence prior to the end of the primary lease term and drilling is being diligently prosecuted at the

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2/ BLM's decision also clarified the status of several other leases committed to the Willow Creek Unit Agreement. After noting that the unit has not fulfilled the public interest requirements of the agreement and regulations, BLM found that the term of several of the leases had been extended by drilling within the unit, but that other leases had not been extended, and had expired. The Tullys appealed only as to the leases listed in footnote 1.

3/ Due to lease segregation, three of the leases have serial numbers which differ from the numbers assigned to the original leases. Land segregated from base lease C-22887 (committed to the Blue Mountain Unit effective Jan. 9, 1987) was included in lease C-45157. Lease C-38336 was segregated from base lease C-25076 (committed to the Willow Creek Unit Agreement No. 14-08-000-21185, effective Aug. 3, 1983). Lease C-45169 was segregated from base lease C-25076 (committed to the Blue Mountain Unit effective Jan. 9, 1987). We note that when these leases were issued, BLM was using "C" rather than "COC" in the lease numbers.

end of the primary term, the lease is extended for 2 years, and so long thereafter as oil or gas is produced in paying quantities. The Tullys explained that Pennzoil, as unit operator, commenced the unit test well on October 29, 1991, when it re-entered the No. 1A Blue Mountain well drilled by Conoco to a total depth of 11,632 feet (at which depth the hole was lost and abandoned).

The Tullys have outlined difficulties encountered when attempting re-entry and state that they believe this to be evidence of both unanticipated conditions and Pennzoil's good faith efforts to do the work. According to the Tullys, they expected that Pennzoil would meet its drilling objectives and would be drilling beyond January 31, 1992, but Pennzoil was prevented from drilling beyond January 12, 1992. The Tullys note that, notwithstanding this difficulty, Pennzoil had been able to commence drilling the unit test well on October 29, 1991, rendering the need for a suspension of operations unnecessary. The Tullys concluded that when the well was drilling over the normal expiration date of the leases (October 31, 1991), it qualified for a 2-year drilling extension.

In a February 7, 1992, letter, BLM noted that the Tullys sought to have BLM rescind its approval of the suspension of operations for the seven leases in issue. According to BLM, the suspension of operations extended the expiration date of those leases from October 31, 1991, to January 31, 1992. BLM stated that the only apparent reason for asking BLM to rescind its approval of suspension of operations for these seven leases was that Pennzoil was drilling on October 31, 1991, but was not drilling on January 31, 1992. If BLM's approval was rescinded, there would be a 2-year drilling extension.

BLM found rescission of the suspension of operations for these seven leases unwarranted. It stated that the rescission request was initiated by the Tullys in an effort to save the leases if Pennzoil was not able to commence drilling until November. BLM explained that hindsight does not alter the reason that it approved the suspension, which was to compensate for the time lost as a result of BLM actions. BLM noted that the suspension of operations was not granted merely to save the leases.

On May 28, 1992, BLM issued its decision clarifying the status of certain of the leases in the Willow Creek Unit Agreement. BLM stated that it had been informed that unit drilling was diligently pursued from October 29, 1991, through early January 1992. Accordingly, it held that several leases had been extended beyond the end of their primary terms pursuant to 43 CFR 3107.1. 4/ BLM also found that there was no drilling

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4/ Several of the leases receiving the 2-year extension were also subject to the 3-month suspension of operating requirements from July 1 through Sept. 30, 1991, effectively extending their primary terms for 3 months. There was drilling activity on these leases to the date of the expiration of their primary term, as extended.

in progress in the Willow Creek Unit on January 31, 1992, and the leases that reached the end of their primary term on that date had expired.

In their statement of reasons, the Tullys assert that BLM erred by not honoring the statutory provision for the 2-year extension by drilling over at the conclusion of the primary term, which was October 31, 1991. They allege that, notwithstanding the fact that even though BLM approved a 4-month suspension of operations on October 10, 1991, suspending the leases through October 31, 1991, it is a well-established rule that a suspension terminates when actual operations commence. They assert that the unit operator commenced diligent operations on October 17, 1991, which was as soon as possible following the BLM's October 15, 1991, approval of the application for permit to drill. According to the Tullys, Pennzoil commenced actual drilling in the No. 1-AX Willow Creek Unit well on October 29, 1991, and diligently continued until January 12, 1992, when various unanticipated difficulties made further drilling impossible.

The Tullys offer the following explanation of the difference between the leases that were extended 2 years and those that were not: The primary terms of the first group expired on July 31, 1991, August 31, 1991, and September 30, 1991, respectively. Actual drilling operations did not commence until October 29, 1991, which was after the 10-year primary terms expired. The Tullys assert that these leases would have expired had they not been suspended, and therefore it was proper for BLM to extend these leases for 3 months. The Tullys explain that the primary-term expiration date for the leases in question was October 31, 1991, and operations commenced before their primary term expired; that the suspension automatically terminated on October 17, 1991 (effective October 1, 1991), while the leases were in their primary term, and no extension of the primary term had been adjudicated by BLM; and that diligent drilling was in progress on the October 31, 1991, lease expiration date. According to the Tullys, this entitled them to the relief provided by the Mineral Leasing Act.

The Tullys assert that under the statute, if actual drilling commences before the end of a lease's primary term and is being diligently prosecuted on the expiration date, the lease is automatically extended for a period of 2 years by operation of law. They contend that the suspension of operations granted by BLM was discretionary, not mandatory, and was for a term of up to 4 months from July 1 (ending October 31, 1991), with the understanding that suspension would terminate when operations commenced.

The Tullys state that they had asked for suspension of the leases because they believed actual drilling would not commence before November 1991, which was after the October 31, 1991, expiration date. According to the Tullys, administrative rescission of suspension of those leases was not necessary because suspension had actually terminated October 1, 1991. They state that if this is the case, a 2-year statutory extension was earned by diligent drilling over on October 31, 1991. The Tullys argue

that extension of the leases for a period equal to the period of the suspension would have been after the fact and pre-empted by the 2-year extension automatically earned by drilling over on October 31, 1991, which was the end of the primary term.

The Tullys urge a finding that BLM's May 28, 1992, decision was in error because BLM failed to recognize the 2-year extension earned by drilling over on October 31, 1991. They claim that, as a result, BLM retroactively extended the leases from October 31, 1991, to January 31, 1992, and then found that the leases had expired. According to the Tullys, the purported extension is contrary to the statute because it had already terminated effective October 1, 1991, and the leases had automatically earned the 2-year statutory extension by drilling over on October 31, 1991.

[1] On July 23, 1991, the Tullys requested a suspension of operations under 43 CFR 3103.4-2, which provides, in pertinent part:

> (a) * * * A suspension of operations only or a suspension of production only may be directed or consented to by the authorized officer in cases where the lessee is prevented from operating on the lease or producing from the lease, despite the exercise of due care and diligence, by reason of force majeure, that is, by matters beyond the reasonable control of the lessee. Applications for any suspension shall be filed in the proper BLM office. Complete information showing the necessity of such relief shall be furnished.
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> (b) The term of any lease shall be extended by adding thereto the period of the suspension, and no lease shall be deemed to expire during any suspension.

On October 10, 1991, BLM suspended the leases for the 4-month period from July 1 through October 31, 1991, subject to automatic termination the first day of the month in which operations commence. Suspension automatically terminated effective October 1, 1991. By applying 43 CFR 3103.4-2(b), the 3-month period of suspension was added to the lease terms, extending the primary terms to January 31, 1992. The conclusion of the primary term was January 31, 1992, and the Tullys admit that there was no drilling on these leases after January 12, 1992. BLM did not err by failing to honor the statutory provision for the 2-year extension by drilling over the conclusion of the primary term.

The Tullys' theory that the extension is contrary to statute because the suspension had terminated effective October 1, 1991, and the leases had automatically earned the 2-year statutory extension by drilling over is flawed. When BLM granted the Tullys the suspension on October 10, 1991, the primary terms were extended for a period equal to the suspension period. The language in 43 CFR 3103.4-2(b) is mandatory: "The term of any

lease shall be extended by adding thereto the period of the suspension." (Emphasis added.) No lesser period may be substituted without violating the lease by shortening its primary term. See Milestone Petroleum, Inc., 85 IBLA 96, 99 (1985). The suspension had already taken place and the lease term extended by October 31, 1991, the original primary-term expiration date.

The Tullys note that the group of leases BLM deemed to have been extended for 2 years by drilling at the end of the primary term would have expired had it not been for the same 3-month extension. The Tullys have no problem finding BLM's decision proper as to these leases, and they attempt to distinguish the leases now under consideration from those "saved" by the suspension and 3-month extension by asserting that, as to the seven leases in question, suspension had terminated and drilling had begun prior to the end of the primary term, thus entitling those leases to the statutory 2-year extension for drilling over the primary term. BLM granted the suspension to compensate for the delay it imposed upon the Tullys due to conflict between seismic helicopters and the big game hunting season. It was not granted to "save" the leases. The suspension dates (July 1 through October 31, 1991), the date the extension terminated (October 1, 1991), and the 3-month extension applied to all of the leases. The Tullys cannot, after the fact, choose which leases should be extended and which should not.

The Tullys refer to Yates Petroleum Corp., 34 IBLA 7 (1978), and Texaco, Inc., 34 IBLA 127 (1978). In those cases the leases had been extended beyond the 10-year primary term either by commitment to a unit and drilling operations within a unit (43 CFR 3107.2-3 (1977)), segregation by partial commitment to an approved unit agreement (43 CFR 3107.4-3 (1977)), or by elimination of the lease from an approved unit agreement (43 CFR 3107.5 (1977)).

There had been no drilling on these leases at the end of the 10-year primary term, but there was drilling on the terminal date of the extended lease term. The Board held that to obtain an extension by drilling over, a lessee must be conducting actual drilling operations at the conclusion of the 10-year primary term, notwithstanding the fact that the actual lease term might otherwise have been extended beyond the end of the initial 10-year primary term. Yates Petroleum Corp., supra at 11; Texaco, Inc., supra at 130. The facts in Yates and Texaco, however, can be distinguished from those in the subject appeals. The leases we are now considering were extended by a suspension and the leases in Yates and Texaco were not. A suspension stops the lease term and the period of suspension is added to the primary term, creating a new expiration date. In Yates and Texaco the extensions granted extended the leases, but did not extend the primary term of the leases. The expiration date for the primary term remained constant.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

John H. Kelly
Administrative Judge